



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2012-0202]

RIN 1625-AA11; 1625-AA87

Regulated Navigation Areas, Security Zones: Dignitary

Arrival/Departure and United Nations Meetings, New York, NY

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

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SUMMARY: The Coast Guard is amending its regulation establishing security zones that are enforceable in connection with the arrival or departure of international leaders for United Nations meetings in New York, NY. This rule establishes new regulated navigation areas, modifies certain security zones, and better organizes the regulation. The amendments will assist the Coast Guard in protecting public safety and visiting dignitaries during these events, and thus promote the Coast Guard's maritime safety and maritime security missions.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG-2012-0202]. To view documents mentioned in this

preamble as being available in the docket, go to

<http://www.regulations.gov>, type the docket number in the

"SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Mr. Jeff Yunker, Coast Guard Sector New York, Waterways Management Division; telephone 718-354-4195, email [Jeff.M.Yunker@uscg.mil](mailto:Jeff.M.Yunker@uscg.mil) or Chief Craig Lapiejko, Coast Guard First District Waterways Management Branch, telephone 617-223-8381, email [Craig.D.Lapiejko@uscg.mil](mailto:Craig.D.Lapiejko@uscg.mil). If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202-366-9826.

#### SUPPLEMENTARY INFORMATION:

##### Table of Acronyms

DHS	Department of Homeland Security
FR	<u>Federal Register</u>
NPRM	Notice of Proposed Rulemaking
SNPRM	Supplemental Notice of Proposed Rulemaking
RNA	Regulated Navigation Area
UN	United Nations
UNGA	United Nations General Assembly

## A. Regulatory History and Information

On September 11, 2012, we published a notice of proposed rulemaking (NPRM) entitled "Security Zones; Dignitary Arrival/Departure and United Nations Meetings, New York, NY" in the Federal Register (77 FR 55777). We received seven comments on the NPRM.

After publication of the NPRM we determined that an RNA is the more appropriate means to regulate the movement of vessels or individuals instead of the security zones originally proposed or already codified at 33 CFR 165.164. On April 19, 2013, we published a supplemental notice of proposed rulemaking (SNPRM) entitled "Regulated Navigation Areas, Security Zones: Dignitary Arrival/Departure and United Nations Meetings, New York, NY in the Federal Register (78 FR 23515). We received one comment on the SNPRM.

## B. Basis and Purpose

The legal basis for the proposed rule is 33 U.S.C 1231; 46 U.S.C Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to establish RNAs and security zones.

On five occasions since March 2011, the United States Secret Service has requested that the Coast Guard establish a temporary security zone on the waters of the East River and Bronx Kill

during the arrival and departure of the President of the United States to and from Randalls and Wards Islands, New York.

This regulation carries out three related actions: (1) establishes new regulated navigation areas in the waters near the United Nations (UN) during UN visits by international leaders; (2) revises the Wall Street Heliport security zone to identify the northern boundary of the security zone on the Manhattan shoreline at Wall Street, which is necessary due to the removal of Pier 13 that is currently referenced in 33 CFR 165.164(a)(1); and (3) revises the United Nations security zone to clarify enforcement times for the security zone, provide a more detailed description of the security zone, and provide a better understanding of the transit restrictions that would be enacted.

#### C. Discussion of Comments, Changes and the Final Rule

After publication of the SNPRM in the Federal Register (78 FR 23515) the National Oceanic and Atmospheric Administration (NOAA) submitted a comment recommending that 33 CFR 165.164(a)(4) be revised to state the United Nations Security Zone extends about 180 yards offshore of Manhattan instead of the currently published 175 yards. This recommendation only changes the description of the security zone's boundaries without changing its geographical coordinates. The Coast Guard agrees and has made this change to the final rule.

The Coast Guard is amending the existing security zone regulation relating to the arrival and departure of dignitaries for UN meetings in New York City, 33 CFR 165.164. Our amendments are substantively similar to the proposals contained in our 2012 NPRM, but we are reorganizing and making a non-substantive revision of § 165.164, and we are redesignating three existing security zones as regulated navigation areas. Please see the NPRM for a further discussion of how we have enforced § 165.164 security zones in the past. We have now determined that an RNA is the more appropriate means to regulate the movement of vessels or individuals instead of the security zones originally proposed or already codified at 33 CFR 165.164. We are designating the Wall Street Heliport, Randalls and Wards Islands, and United Nations Full River Closure security zones as RNAs. The Marine Air Terminal, United Nations, and United Nations West Channel Closure security zones will remain designated as security zones as they do not completely restrict vessel traffic on that portion of the Bowery Bay and East River during enforcement of the security zones.

We are reorganizing § 165.164 and adding descriptive designations to name each of the several locations covered by that regulation.

We are revising § 165.164(a)(1) relating to the Wall Street Heliport. We are removing a reference to Pier 13, which no longer

exists, but otherwise the boundaries of the designated area will not change. The existing security zone is now designated a regulated navigation area.

We are adding a new § 165.164(a)(2) and establishing an RNA on the waters of the East River and Bronx Kill in the vicinity of Randalls and Wards Islands. The RNA is approximately 2,150 yards long and 860 yards wide, and encompasses approximately 0.21 square nautical miles. It will be enforced from 30 minutes before a dignitary's arrival until 15 minutes after the dignitary's departure from the area.

We are making no changes to § 165.164(a)(3), other than to designate it as the Marine Air Terminal, La Guardia Airport Security Zone.

We are designating the security zone created by § 165.164(a)(4) as the United Nations Security Zone, and we are rewording the description of this zone's boundaries for clarity, without changing its geographical coordinates. In new paragraph (d), we state that this zone is in force at all times.

We are transferring the security zone described in existing § 165.164(a)(5) to paragraph (a)(6), and designating it the United Nations Full River Closure RNA. The content of existing paragraph (a)(6) is addressed in new paragraph (d). When enforced, the UN Full River Closure RNA will fully close the East River to vessel traffic within its boundaries. We are creating a

new security zone in paragraph (a)(5), to be designated the United Nations West Channel Closure Security Zone. When in force, it will close only a portion of the western channel of the river. Vessels capable of transiting the shallower waters of the eastern channel can do so.

The content of existing paragraph (a)(7) is addressed in new paragraph (d).

We are adding a new § 165.164(b) to define terms used in the regulation. The content of existing paragraph (b) is being moved to paragraph (c).

We are adding a new § 165.164(d) to describe how and when each regulated navigation area or security zone will be enforced, and how the public will be notified that enforcement is in effect.

Finally, we are adding a new § 165.164(e) to describe how vessel operators may obtain permission to enter or operate within a regulated navigation area or security zone.

#### D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

##### 1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and

Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

This determination is based on the limited time that vessels will be restricted from the Randalls and Wards Islands RNA. The RNA will be activated for approximately 60 minutes approximately six times per year or when necessary. The Coast Guard expects minimal adverse impact to mariners from the RNA's activation based on the limited duration of the enforcement period, the limited geographic area affected and because affected mariners may request authorization from the COTP or the designated on-scene representative to transit the RNA.

## 2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received zero comments from the Small Business



Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: The owners and operators of vessels intending to transit or anchor in a portion of the East River or Bronx Kill, in the vicinity of Randalls or Wards Islands, NY during the enforcement periods.

These RNAs will not have a significant economic impact on a substantial number of small entities for the following reasons: The RNA is of limited size and duration. Persons or vessels may request permission to transit the RNA from the COTP or the designated on-scene representative.

Additionally, before and during the enforcement period, the Coast Guard will issue maritime advisories widely available to users of the waterway, including marine information broadcasts, and distribute a written notice online at <http://homeport.uscg.mil/newyork>.

### 3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or

options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### 4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### 5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

## 6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

## 7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

## 8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

## 9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to

minimize litigation, eliminate ambiguity, and reduce burden.

#### 10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

#### 11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### 12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

#### 13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### 14. Environment

We have analyzed this rule under Department of Homeland

Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of an RNA and revisions to current RNAs and security zones. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREA

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Revise § 165.164 to read as follows:

§ 165.164 Regulated Navigation Areas, Security Zones: Dignitary Arrival/Departure and United Nations Meetings, New York, NY.

(a) Location. The following areas are regulated navigation areas (RNA) or security zones:

(1) Wall Street Heliport RNA. All waters of the East River within the following boundaries: East of a line drawn between approximate position 40°42'01" N, 074°00'39" W (east of The Battery) to 40°41'36" N, 074°00'52" W (point north of Governors Island) and north of a line drawn from the point north of Governors Island to the southwest corner of Pier 7 North, Brooklyn; and south of a line drawn between 40°42'14.8" N, 074°00'20.3" W (Wall Street, Manhattan), and the northwest corner of Pier 2 North, Brooklyn (NAD 1983).

(2) Randalls and Wards Islands RNA: All waters of the East River between the Hell Gate Rail Road Bridge (mile 8.2), and a line drawn from a point at approximate position 40° 47' 27.12"N, 073° 54' 35.14"W (Lawrence Point, Queens) to a point at approximate position 40° 47' 52.55"N, 073° 54' 35.25"W (Port Morris Stacks), and all waters of the Bronx Kill southeast of the Bronx Kill Rail Road Bridge (mile 0.6) (NAD 1983).

(3) Marine Air Terminal, La Guardia Airport Security Zone: All waters of Bowery Bay, Queens, New York, south of a line drawn from the western end of La Guardia Airport at approximate position 40°46'47" N, 073°53'05" W to the Rikers Island Bridge at

approximate position 40°46'51" N, 073°53'21" W and east of a line drawn between the point at the Rikers Island Bridge to a point on the shore in Queens, New York, at approximate position 40°46'36" N, 073°53'31" W (NAD 1983).

(4) United Nations Security Zone. All waters of the East River bound by the following points: 40°44'37" N, 073°58'16.5" W (the base of East 35th Street, Manhattan), then east to 40°44'34.5" N, 073°58'10.5" W (about 180 yards offshore of Manhattan), then northeasterly to 40°45'29" N, 073°57'26.5" W (about 125 yards offshore of Manhattan at the Queensboro Bridge), then northwesterly to 40°45'31" N, 073°57'30.5" W (Manhattan shoreline at the Queensboro Bridge), then southerly along the shoreline to the starting point at 40°44'37" N, 073°58'16.5" W (NAD 1983).

(5) United Nations West Channel Closure Security Zone. All waters of the East River north of a line drawn from approximate position 40°44'37" N, 073°58'16.5" W (the base of East 35th Street, Manhattan), to approximate position 40°44'31.04" N, 073°58'03.10" W (approximately 400 yards east of the Manhattan shoreline), all waters west of a line drawn from approximate position 40°44'31.04" N, 073°58'03.10" W (approximately 400 yards east of the Manhattan shoreline), to the southern tip of Roosevelt Island at approximate position 40°44'57.96" N, 073°57'41.57" W, then along the western shoreline of Roosevelt

Island to the Queensboro Bridge, and all waters south of the Queensboro Bridge (NAD 1983).

(6) United Nations Full River Closure RNA. All waters of the East River north of a line drawn from approximate position 40°44'37" N, 073°58'16.5" W (the base of East 35th Street, Manhattan), to approximate position 40°44'23" N, 073°57'44.5" W (Hunters Point, Long Island City), and south of the Queensboro Bridge (NAD 1983).

(b) Definitions. As used in this section--

Designated representative means any Coast Guard commissioned, warrant, or petty officer who has been designated by the COTP to act on the COTP's behalf. The designated representative may be on a Coast Guard vessel, or onboard a federal, state, or local agency vessel that is authorized to act in support of the Coast Guard.

Dignitary means the President or Vice President of the United States, or visiting heads of foreign states or governments.

(c) Regulations. In accordance with the general regulations in 33 CFR part 165, no person or vessel may enter or move within a RNA or security zone created by this section during enforcement periods unless granted permission to do so by the COTP New York or the designated representative. Vessel operators and persons given permission to enter or operate in the RNA or security zone



must comply with all directions given to them by the COTP or the designated representative. Upon being hailed by a U.S. Coast Guard or New York City police vessel by siren, radio, flashing lights, or other means, the operator of a vessel must proceed as directed, and follow any instructions to anchor or moor up to a waterfront facility.

(d) Enforcement. The security zone described in paragraph (a)(4) of this section is effective and will be enforced at all times. Coast Guard Sector New York will provide actual notice to mariners for the purpose of enforcement for the regulated navigation areas and security zones described in paragraphs (a)(1), (a)(2), (a)(3), (a)(5), and (a)(6). The Captain of the Port will also provide notice to the maritime public regarding the activation of these RNAs and security zones by appropriate means, which may include but are not limited to a Local Notice to Mariners or marine information broadcasts, and at <http://homeport.uscg.mil/newyork>.

(e) Contact Information. Vessel operators desiring to enter or operate within a RNA or security zone shall telephone the COTP at (718) 354-4356 or the designated representative via VHF channel 16 to obtain permission to do so.

Dated: August 7, 2013

D. B. Abel  
Rear Admiral, U.S. Coast Guard  
Commander, First Coast Guard District

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